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DEC 17 2008

**OFFICE OF PETITIONS**

In re Application of  
Andrew Kostrzewski et al.  
Application No. 09/745,363  
Filed: December 21, 2000  
Attorney Docket No. 100.232

**ON PETITION**

This is a decision on the Petition to Revive, filed November 24, 2008 under 37 CFR 1.137(b), to revive the above identified application.<sup>1</sup>

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned December 12, 2002 for failure to file a timely response to the non-Final Office Action mailed September 11, 2002. Accordingly, a Notice of Abandonment was mailed March 21, 2003. A Petition to Revive was filed December 6, 2007 and was dismissed in a decision mailed February 29, 2008 because while petitioners argued that the delay in filing a timely response to the September 11, 2002 non-Final Office Action was due to a docketing error, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2), thus the petition lacked compliance with item (3) under 37 CFR 1.137(b).

The application was abandoned for more than five years and the evidence provided in the petition filed December 6, 2007 did not establish that the "entire" delay was "unavoidable" or "unintentional".

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<sup>1</sup>A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(I)(C) and (D).

Comes now petitioner with an identical petition and response to the Office Action mailed September 11, 2002 however the instant petition does not provide any additional evidence to overcome the conclusion that the application was not intentionally abandoned. The petition filed December 6, 2007 was dismissed because the only evidence provided to show the entire delay was unavoidable and unintentional was the declaration of Leonard Tachner who was counsel of record at the time of abandonment, that a docketing error occurred that caused him not to file a response to the office action or notice that the application had become abandoned for more than five years.

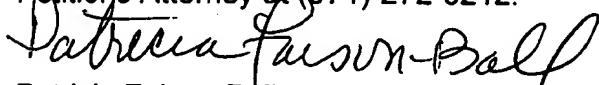
Until and unless additional evidence is provided to show that this application was not intentionally abandoned, this application will remain in an abandoned status.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
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By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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